

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

TYRONE NOEL NUNN,

Plaintiff,

v.

ELY STATE PRISON, *et al.*,

Defendants.

Case No. 3:23-cv-00492-LRH-CLB

ORDER

Plaintiff Tyrone Noel Nunn brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Ely State Prison. (ECF No. 8). On October 12, 2023, this Court ordered Nunn to file a complaint and file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee on or before December 12, 2023. (ECF No. 3). The Court warned Nunn that the action could be dismissed if he failed to file a fully complete application to proceed *in forma pauperis* with all three documents or pay the full \$402 filing fee for a civil action by that deadline. (*Id.* at 3).

Instead of filing a complaint, Nunn filed a motion for appointment of counsel. (ECF No. 4). However, the motion for appointment of counsel appeared to include an application to proceed *in forma pauperis*, was 42 pages long, and contained documents that did not relate to the motion for counsel. (*Id.* at 1-42). The Court refiled the application to proceed *in forma pauperis* separately at (ECF No. 5).

The Court denied Nunn's application to proceed *in forma pauperis* because it did not include a financial certificate on this Court's approved form. (ECF No. 6.) The Court gave Nunn one final opportunity to file a complaint and pay the \$402 filing fee or file a complete application to proceed *in forma pauperis*, including a financial certificate on this Court's approved form, on or before February 9, 2024. (ECF No. 6). On February 13,

1 2024, Nunn filed a document titled civil rights complaint, which appears to include parts
2 of eight separate complaints. (ECF No. 7.) However, Nunn still has not filed a fully
3 complete application to proceed *in forma pauperis* or paid the \$402 filing fee.

4 I. DISCUSSION

5 District courts have the inherent power to control their dockets and “[i]n the
6 exercise of that power, they may impose sanctions including, where appropriate . . .
7 dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831
8 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court
9 order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir.
10 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to
11 keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th
12 Cir. 1987) (dismissal for failure to comply with court order). In determining whether to
13 dismiss an action on one of these grounds, the Court must consider: (1) the public’s
14 interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket;
15 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
16 cases on their merits; and (5) the availability of less drastic alternatives. See *In re*
17 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
18 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

19 The first two factors, the public’s interest in expeditiously resolving this litigation
20 and the Court’s interest in managing its docket, weigh in favor of dismissal of Nunn’s
21 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
22 because a presumption of injury arises from the occurrence of unreasonable delay in filing
23 a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542
24 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
25 cases on their merits—is greatly outweighed by the factors favoring dismissal.

26 The fifth factor requires the Court to consider whether less drastic alternatives can
27 be used to correct the party’s failure that brought about the Court’s need to consider
28 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining

that considering less drastic alternatives *before* the party has disobeyed a court order does not satisfy this factor); *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court’s order as satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled with the warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*). Courts “need not exhaust every sanction short of dismissal before finally dismissing a case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and unless Nunn either files a fully complete application to proceed *in forma pauperis* or pays the \$402 filing fee for a civil action, the only alternative is to enter a third order setting another deadline. But the reality of repeating two ignored orders is that it often only delays the inevitable and squanders the Court’s finite resources. The circumstances here do not indicate that this case will be an exception: there is no hint that Nunn needs additional time or evidence that he did not receive the Court’s order. Setting a third deadline is not a meaningful alternative given these circumstances. So the fifth factor favors dismissal.

II. CONCLUSION

Having thoroughly considered these dismissal factors, the Court finds that they weigh in favor of dismissal. It is therefore ordered that this action is dismissed without prejudice based on Nunn’s failure to file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee in compliance with this October 12, 2023, and January 9, 2024, orders. The Clerk of Court is directed to enter judgment accordingly and close this case. No other documents may be filed in this now-closed case. If Nunn wishes to pursue his claims, he must file a complaint in a new case.

IT IS SO ORDERED.

DATED THIS 20th day of February 2024.


 LARRY R. HICKS
 UNITED STATES DISTRICT JUDGE